



Guide to Alcohol and Beer Laws in Tennessee

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Introduction

Frequently, MTAS consultants receive questions related to alcohol and beer laws in Tennessee. In an effort to assist municipal officials and employees with these questions, former MTAS Legal Consultant Elisha Hodge developed a guide in 2020 that includes many of the relevant statutory provisions related to alcohol and beer in Tennessee. This document is an updated version of the 2023 edition with the addition of some frequently asked questions.

Significant Statutory and Regulatory Provisions

This guide does not include every statutory provision related to alcohol or beer, so the Tennessee Code will still need to be reviewed as questions arise. The various provisions are arranged by headings for ease of reference.

BEER

T.C.A. § 57-5-101 (b) “Beer” defined

For purposes of this title, “beer” means products made from the normal alcoholic fermentation of malt or other cereal grains, sugar, or fruit ingredients used to make cider, and having an alcoholic content of not more than eight percent (8%) alcohol by weight and that do not contain distilled spirits or wine as defined in § 57-3-101; provided, that at least fifty-one percent (51%) of the overall alcoholic content by weight in the finished product is obtained by the fermentation of malt, other cereal grains, sugar, or fruit ingredients used to make cider, and no more than forty-nine percent (49%) of the overall alcoholic content by weight in the finished product is obtained by the addition of flavorings or other non-beverage ingredients containing alcohol.

T.C.A. § 57-5-103 Beer permits

- (a) (1) It is unlawful to operate any business engaged in the sale, distribution, manufacture, or storage of beer without a permit issued by the county or city where such business is located under the authority herein delegated to counties and cities.
- (2) Permits shall be issued to the owner of the business or other entity

responsible for the premises for which the permit is sought, whether a person, firm, corporation, joint-stock company, syndicate, association, or local governmental entity where the governing body has authorized such sales of beer.

(3) A permit shall be valid:

(A) Only for the owner to whom the permit is issued and cannot be transferred to another owner. If the owner is a corporation, a change in ownership shall occur when control of at least fifty percent (50%) of the stock of the corporation is transferred to a new owner;

(B) Only for a single location, except as provided in subdivision (a)(4), and cannot be transferred to another location. A permit shall be valid for all decks, patios and other outdoor serving areas that are contiguous to the exterior of the building in which the business is located and that are operated by the business; and

(C) Only for a business operating under the name identified in the permit application.

(4) Where an owner operates two (2) or more restaurants or other businesses within the same building, the owner may in the owner's discretion operate some or all such businesses pursuant to the same permit.

(5) A business can sell beer for both on-premises and off-premises consumption at the same location pursuant to one (1) permit.

(6) A permit holder must return a permit to the county or city that issued it within fifteen (15) days of termination of the business, change in ownership, relocation of the business or change of the business's name; provided, that notwithstanding the failure to return a beer permit, a permit shall expire on termination of the business, change in ownership, relocation of the business or change of the business's name.

(7) In the case of beer wholesalers, as defined in § 57-6-102, no county or city shall require a permit from a wholesaler unless such wholesaler operates a warehouse in such county or city.

(8) Any person, firm, corporation, joint-stock company, syndicate, or association engaged in the sale, distribution, or manufacture of beer without the permit required by this part commits a Class A misdemeanor.

(9) Nothing in this chapter shall be construed as granting counties or cities the authority to require the periodic renewal of beer permits.

(10) After July 1, 2015, a city or county shall not issue a permit under this chapter unless the applicant has been a citizen or lawful resident of the United States for not less than one (1) year immediately preceding the date upon which the application is made to the city or county. See Tennessee AG Opinion 16-09, which held that the language in this section is unlikely to pass constitutional muster. The opinion can be accessed [here](#).

(11) A permit holder may sell beer online for curbside pickup at the permit holder's location. Purchased beer must be delivered to the customer's vehicle, and the vehicle must be located within a paved parking area adjacent to the place of business. Beer sold through an online curbside pickup service must be pulled from the inventory located at the permitted location of the retailer providing the service and may not be pulled from the inventory of another retailer or permitted location. Any employee bringing beer to a vehicle for online curbside pickup must confirm the individual receiving the beer is at least twenty-one (21) years of age.

T.C.A. § 57-5-103 (e) Criminal history check on applicant for beer permit

(e) A city or county is authorized to seek criminal history background or fingerprint checks on applicants. Criminal background checks may include fingerprint checks against state and federal criminal records maintained by the Tennessee bureau of investigation and the federal bureau of investigation. The Tennessee bureau of investigation is authorized to assess fees for the searches in accordance with the fee schedule established by the bureaus.

T.C.A. § 57-5-106 Regulation of beer by city

(a) All incorporated cities, towns and Class B counties in this state are authorized to pass proper ordinances governing the issuance and revocation or suspension of licenses for the storage, sale, manufacture and/or distribution of beer within the corporate limits of the cities and towns and within the general services districts of Class B counties outside the limits of any smaller cities as defined in § 7-1-101 and to provide a board of persons before whom such application shall be made, but the

power of such cities, towns and Class B counties to issue licenses shall in no event be greater than the power herein granted to counties, but cities, towns and Class B counties may impose additional restrictions, fixing zones and territories and provide hours of opening and closing and such other rules and regulations as will promote public health, morals and safety as they may by ordinance provide. The ordinance power granted to a municipality by this subsection (a) does not permit a municipality to establish residency requirements for its applicants. The ordinance power granted to a municipality by this section does not permit a municipality to impose training or certification restrictions or requirements on employees of a permittee if those employees possess a server permit issued by the alcoholic beverage commission pursuant to chapter 3, part 7 of this title.

T.C.A. § 57-5-104 Application fee for beer permit

(a) Each applicant for a permit required by § 57-5-103 shall be required to pay an application fee of two hundred fifty dollars (\$250) to the county or city in which the applicant's place of business is located. No portion of the fee shall be refunded to the applicant, notwithstanding whether an application is approved or denied.

T.C.A. § 57-5-104 Privilege tax

- (b) (1) There is hereby imposed on the business of selling, distributing, storing or manufacturing beer in this state a privilege tax of one hundred dollars (\$100), notwithstanding § 57-6-112.
- (2) Any person, firm, corporation, joint-stock company, syndicate or association engaged in selling, distributing, storing or manufacturing beer shall remit the tax on January 1 to the county or city in which such business is located. The tax shall be remitted to the county clerk for businesses located in the county outside the incorporated limits of any city or town, and to the official identified by the city or town in the notice required by subdivision (b)(3) for businesses located within the incorporated limits of the city or town.
- (3) Counties and cities shall mail written notice to each permit holder of the payment date of the annual tax at least thirty (30) days prior to January 1. Notice shall be mailed to the address specified by the permit holder on its permit application. If a permit holder does not pay the tax by January 31 or

within thirty (30) days after written notice of the tax was mailed, whichever is later, then the county or city shall notify the permit holder by certified mail that the tax payment is past due. If a permit holder does not pay the tax within ten (10) days after receiving notice of its delinquency by certified mail, then the county or city may suspend or revoke the permit or impose a civil penalty pursuant to § 57-5-108.

(4) Counties, cities or towns may utilize these tax funds for any public purpose.

(5) At the time a new permit is issued to any business subject to this tax, the permit holder shall be required to pay the privilege tax on a prorated basis for each month or portion thereof remaining until the next tax payment date.

T.C.A. § 57-5-108 Revocation of beer permits, fines, and responsible vendors

- (a) (2) (A) A city, Class A county, or Class B county, or any committee, board, or commission created by these governmental bodies, shall not, pursuant to § 57-5-608, revoke or suspend the permit of a responsible vendor for a clerk's illegal sale of beer to a minor, if the permit or license holder and the clerk making the sale have complied with the requirements of § 57-5-606 as a responsible vendor under this part, but may impose on the responsible vendor a civil penalty not to exceed one thousand dollars (\$1,000) for each offense of making or permitting to be made any sales to minors or for any other offense.
- (B) The prohibition of subdivision (a)(2)(A) concerning the revocation or suspension of the vendor's permit shall not apply to any vendor who is not a responsible vendor under this part, or to a participating vendor, if the vendor or clerk making a sale to a minor fails to comply with the requirements of § 57-5-606. With respect to such permit or license holder, the committee, board, or commission may, at the time it imposes a revocation or suspension, offer the permit or license holder the alternative of paying a civil penalty not to exceed two thousand five hundred dollars (\$2,500) for each offense of making or permitting to be made any sales to minors, or a civil penalty not to exceed one thousand dollars (\$1,000) for any other offense.

(C) Permanent revocation of beer permits may only be applied when the permit holder has at least two (2) violations within a twelve-month period.

(D) Revocation of beer permits applies only to that permit holder, or agents of the permit holder, at that location. Revocation of beer permits shall not stay with the property if the property changes hands, nor may a city, Class A county or Class B county, or any committee, board or commission created by these governmental bodies, apply penalties, suspensions or revocations to other beer permits held by the permittee at other locations.

(E) Revocation of a beer permit at one (1) location should not be the sole disqualifying factor when considering the issuance of beer permits at other locations.

(F) If, at any location that has been affected by permanent beer permit revocation, the property changes hands and no longer belongs to the permit holder, or agents of the permit holder, the new property owner may apply to the beer board for release of revocation.

(G) If a civil penalty is offered as an alternative to revocation or suspension, where allowed under subdivision (a)(2)(B), the holder shall have seven (7) days within which to pay the civil penalty before the revocation or suspension shall be imposed. If the civil penalty is paid within that time, the revocation or suspension shall be deemed withdrawn. The holder's payment of a civil penalty shall not affect the holder's ability to seek review of the civil penalty pursuant to subsection (d).

(3) A city or county may at any time accept the payment of a civil penalty, not to exceed the amounts set forth in subdivision (a)(2)(B), by a permit or license holder charged with a violation of this chapter, which payment shall be an admission by the holder of the violation so charged and shall be paid to the exclusion of any other penalty that the city or county may impose.

(b) No permit or license shall be revoked on the grounds the operator or any person working for the operator sells beer to a minor over eighteen (18) years of age if such minor exhibits an identification, false or otherwise, indicating the minor's age to be

twenty-one (21) or over, if the minor's appearance as to maturity is such that the minor might reasonably be presumed to be of such age and is unknown to such person making the sale. The license or permit may be suspended for a period not to exceed ten (10) days or a civil penalty up to one thousand five hundred dollars (\$1,500) may be imposed pursuant to subdivision (a)(3). However, this shall not be construed in any way to relieve the minor from liability for making such illegal purchase as provided in § 57-5-301.

(c) The local legislative body or a committee or board created by the local legislative body, in considering the suspension or revocation of a license, shall consider repeated violations of any local ordinance or state law involving prohibited sexual contact on the premises of an adult-oriented establishment.

(d) The action of such agency in connection with the issuance of any order of any kind, including the revocation or suspension of a license or permit, imposition of a civil penalty or the refusal to grant a license or permit under §§ 57-5-105, 57-5-106 and this section, may be reviewed by statutory writ of certiorari, with a trial de novo as a substitute for an appeal, the petition of certiorari to be addressed to the circuit or chancery court of the county in which any such order was issued.

(e) Immediately upon the grant of the writ of certiorari, the agency revoking or suspending a license or permit or imposing a civil penalty shall cause to be made, certified and forwarded to the court a complete transcript of the proceedings in the cause.

...

(k) Where a permit or license is revoked, no new license or permit shall be issued to permit the sale of beer on the same premises until after the expiration of one (1) year from the date the revocation becomes final and effective. The board, in its discretion, may determine that issuance of a license or permit before the expiration of one (1) year from the date of revocation becomes final is appropriate, if the individual applying for such issuance is not the original holder of the license or any family member who could inherit from such individual under the statute of intestate succession.

T.C.A. § 57-5-109 Proximity to place of public gathering and previously issued permit

(a) A city or county shall not suspend, revoke or deny a permit to a business engaged in selling, distributing or manufacturing beer on the basis of the proximity of the business to a school, residence, church, or other place of public gathering if a valid permit had been issued to any business on that same location. This section shall not apply if beer is not sold, distributed or manufactured at that location during any continuous six-month period.

T.C.A. § 57-5-111 Homemade beer

(a) For purposes of this section:

- (1) “Beer” has the same meaning as the term is defined in § 57-5-101(b); and
- (2) “Homemade,” with respect to the making of beer, means beer made by a person’s own efforts and not for a commercial purpose, but does not require that the beer be made in the person’s home.

(b) (1) No license or permit shall be required under this title for the making of homemade beer, and the possession, transportation, or storage of homemade beer, by any person if all of the following apply:

- (A) The person who makes the beer receives no compensation;
- (B) The beer is not sold or offered for sale; and
- (C) The total quantity of beer made, in a calendar year, by the person and any other person living in the same household does not exceed one hundred gallons (100 gal.) if the household has only one (1) person of legal drinking age or two hundred gallons (200 gal.) if the household has two (2) or more persons of legal drinking age.

(2) A person who makes, possesses, transports, or stores beer in compliance with the limitations specified in subdivision (b)(1) is not a manufacturer of beer for purposes of this chapter.

(3) Any homemade beer in compliance with subdivision (b)(1) that is being transported shall be clearly identified as homemade beer.

(4) Homemade beer made in compliance with the limitations in subdivision (b)(1) may be consumed by the person who made it and the person’s family, neighbors, and friends at any private residence or other private location where the possession and consumption of beer is permissible under this chapter, local ordinances, or other applicable law. This subdivision (b)(4) does not

apply to licensed premises under this chapter.

(c) The use of homemade beer made in compliance with the limitations specified in subdivision (b)(1) is allowed for purposes of exhibition, demonstration, judging, tasting, or sampling or as part of a contest or competition, if the exhibition, demonstration, judging, tasting, sampling, contest, or competition is held at a private residence or on a licensed premises. Homemade beer used for purposes described in this subsection (c), including the submission or consumption of such beer, shall not be considered sold or offered for sale, and any prize awarded at a contest or competition or as a result of an exhibition, demonstration, judging, tasting, or sampling shall not be considered compensation. No fee may be charged for consumption of the homemade beer at the exhibition, demonstration, judging, tasting, sampling, contest, or competition; provided, however, an entrance fee may be charged to persons attending an exhibition, contest, or competition.

(d) (1) Notwithstanding any law to the contrary, a person who is not a permit holder under this chapter may, at a private residence, and a person who is a permit holder under this chapter may, on the permitted premises, conduct, sponsor, or host a contest, competition, or other event for the exhibition, demonstration, judging, tasting, or sampling of homemade beer made in compliance with the limitations specified in subdivision (b)(1) if the person does not sell the beer and, unless the person is the maker of the beer, does not acquire any ownership interest in the beer.

(2) No fee may be charged for consumption of homemade beer at the contest, competition, or other event; provided, however, an entrance fee may be charged to persons attending a contest, competition, or other event.

(3) If the contest, competition, or other event is held on a permitted premises, the permit holder may allow the homemade beer to be stored on the premises if the homemade beer is clearly identified and kept separate from any alcoholic beverages or beer owned by the permit holder. Any homemade beer stored on the premises shall be removed within twenty-four (24) hours after the contest, competition, or other event has ended.

(e) Any city or county may regulate contests, competitions, or other events for the exhibition, demonstration, judging, tasting, or sampling of homemade beer as described in subsection (d), including requiring a permit for the contests,

competitions, or other events.

(f) No taxes levied or collected pursuant to this title shall be applicable to any homemade beer made in compliance with subdivision (b)(1).

T.C.A. § 57-5-301(b) Hours beer may be sold

(b) (1) No alcoholic beverage within the scope hereof shall be sold between twelve o'clock midnight (12:00) and six o'clock a.m. (6:00 a.m.). No such beverage shall be sold between twelve o'clock midnight (12:00) on Saturday and eleven fifty-nine o'clock p.m. (11:59 p.m.) on Sunday. No such beverage shall be consumed, or opened for consumption, on or about any premises licensed hereunder, in either bottle, glass, or other container, after twelve fifteen o'clock a.m. (12:15 a.m.). Any county by resolution of the governing body may extend the hours for the sale of beer; provided, however, that the hours for the sale of beer in "clubs" as defined in § 57-4-102, shall conform to those hours for the sale of liquor by the drink as provided in chapter 4 of this title.

(2) A violation of subdivision (b)(1) is a Class C misdemeanor.

(3) This subsection (b) shall not affect the power of governing bodies of municipal corporations or of Class B counties by ordinance to fix the hours when such beverages may be sold within the incorporated limits of such respective municipalities or within the general services districts of Class B counties outside the limits of any smaller city as defined in § 7-1-101. Municipal corporations may authorize the sale of such beverages in their respective corporate limits on Sundays or at such hours as may be prescribed by ordinance. Class B counties may authorize the sale of such beverages on Sundays in their respective general services districts outside their urban services districts and outside the limits of any smaller city or cities or in their respective urban services districts or in both or at such hours as may be prescribed by ordinance.

T.C.A. § 57-5-113 Hours Beer May be sold in an establishment that has a valid LBD license

Any establishment that is permitted to sell liquor or wine for on-premises

consumption pursuant to chapter 4 of this title shall be allowed to sell beer at any time the establishment is legally authorized to sell liquor or wine; provided, that the establishment has lawfully obtained a beer permit from the appropriate jurisdiction.

(See the language below.)

Tennessee Alcoholic Beverage Commission Tenn. Comp. R. and Reg 0100-01-.03 reads:

Consumption on Licensed Premises. Except as provided for in 0100-01-.08 below, no licensee shall permit alcoholic or malt beverages to be consumed and/or sold on the licensed premises between the hours of 3:00 a.m. and 8:00 a.m. on Monday through Saturday or between the hours of 3:00 a.m. and 10:00 a.m. on Sunday unless the local jurisdiction has opted out of the expanded hours. If such is the case, then the consumption and/or sale of alcoholic beverages may begin at 12:00 p.m. on Sunday.

T.C.A. § 57-5-303 Permanent revocation of a beer permit

(c) Upon the second conviction of any person engaging in a business regulated under this chapter of making, or permitting to be made, any sale of alcoholic beverages, beer or wine to a person under twenty-one (21) years of age in violation of this chapter, such person is guilty of a Class E felony. In addition, upon the second such conviction, the permit or license of such person shall be automatically and permanently revoked regardless of any other punishment actually imposed.

T.C.A. § 57-5-607 Sales to Minors by a clerk in the responsible vendor program

If a beer board determines that a sale to a minor occurred by an off-premise beer permit holder, then the certification of the clerk making the sale shall be invalid and the clerk may not reapply for a new certificate for a period of one (1) year from the date of the beer board's determination. Beer boards shall report the names of such clerks to the commission within fifteen (15) days of finding that a sale to a minor occurred. The commission shall notify the responsible vendor of their certified clerks who have lost their certification within fifteen (15) days of notification by the beer board.

T.C.A. § 57-5-608 Suspension and revocation of a beer permit when the vendor is part of the responsible vendor program

(a) A permit under this part may not be suspended or revoked by a beer board based on a clerk's illegal sale of beer to a minor person who is not of lawful drinking age, if the clerk is properly certified and has attended annual meetings since the original certification, or is within sixty-one (61) days of the date of hire at the time of the violation.

(b) Notwithstanding subsection (a), the commission shall revoke the certification of a vendor certified as a responsible vendor, if the vendor had knowledge of the violation or should have known about the violation, or participated in or committed the violation. If the commission revokes a vendor's certification under this section, the vendor shall be penalized for the violation by the beer board as if the vendor were not certified as a responsible vendor.

(c) Notwithstanding subsection (a) or any other law, the commission shall revoke the vendor's status as a certified responsible vendor, if the vendor has two (2) violations within a twelve-month period. The revocation shall be for a period of three (3) years.

T.C.A. § 57-5-605(e) Reporting requirements for beer boards related to undercover beer sales to minors

(e) (1) As used in this subsection (e), "beer board" means the local legislative body or committee appointed by the local legislative body having authority to issue licenses or permits under this chapter.

(2) To the extent the beer board has access to the information required pursuant to this subsection (e), the beer board shall file with the alcoholic beverage commission an annual statistical report by February 1 of each year based on the previous calendar year's information detailing the following:

(A) The total number of beer permits or licenses issued by the beer board for off-premises consumption;

(B) The number of violations for the sale of beer for off-premises consumption to a person under twenty-one (21) years of age resulting from:

(i) A "sting" conducted pursuant to § 39-15-413; and

(ii) Arrests made under conditions not related to a "sting";

- (C) Whether the violation of subdivision (B) occurred at an establishment participating in the responsible vendor program;
- (D) Whether if a “sting” was conducted pursuant to § 39-15-413 at an establishment participating in the responsible vendor program, the underage person used in the “sting” was unsuccessful in making the purchase;
- (E) The type and number of violations other than the sale of beer for off-premises consumption to a person under twenty-one (21) years of age occurred at establishments selling beer for off-premises consumption;
- (F) The name of the license or permit holder at the location where the violation occurred; and
- (G) The specific penalty imposed by the beer board for each violation upon a finding that a violation occurred.

(3) The alcoholic beverage commission shall compile the statistical information received from the beer boards and file a report with the state and local government committee of the senate and the state government committee of the house of representatives by March 15 of the year in which the report is received, together with recommendations for legislative changes related to the responsible vendor program, if any are recommended by the commission.

(4) The report made pursuant to subdivision (3) shall be made available by the alcoholic beverage commission to any person filing a written request for a copy of the report.

LIQUOR BY THE DRINK (ON-PREMISES CONSUMPTION)

T.C.A. § 57-4-101 Locations authorized to sell liquor by the drink without a referendum

See the entire statutory provision [here](#). Tenn. Code Ann. § 57-4-101.

T.C.A. § 57-4-103 Local option election on the liquor by the drink

- (a) (1) This chapter shall be effective in any jurisdiction which authorizes the sale of alcoholic beverages for consumption on the premises in a referendum in the

manner prescribed by § 57-3-106; provided, that, in addition to any other method authorized for holding an election pursuant to § 57-3-106, an election may be held for such sales upon adoption of a resolution by a two-thirds (2/3) vote of the legislative body of a county or municipality.

...

(3) If any county has authorized the sale of alcoholic beverages for sale for consumption off premises pursuant to § 57-3-106, then any municipality wholly or partially within the boundaries of the county may conduct a referendum to authorize the sale of alcoholic beverages for consumption on the premises within the corporate boundaries of the municipality.

...

(b) At any such election, the only question submitted to the voters shall be in the following form:

For legal sale of alcoholic beverages for consumption on the premises in _____ (here insert name of political subdivision).

Against legal sale of alcoholic beverages for consumption on the premises in _____ (here insert name of political subdivision).

T.C.A. § 57-4-203(d)(1) Hours of sale for liquor by the drink

(d) HOURS OF SALE.

(1) Except as provided in subdivision (d)(5), hotels, clubs, zoological institutions, public aquariums, museums, motels, convention centers, restaurants, community theaters, theater, historic interpretive centers, sports authority facilities, and urban park centers, licensed as provided herein to sell alcoholic beverages, and/or malt beverages, and/or wine may not sell, or give away, alcoholic beverages and/or malt beverages and/or wine between the hours of three o'clock a.m. (3:00 a.m.) and eight o'clock a.m. (8:00 a.m.) on weekdays, or between the hours of three o'clock a.m. (3:00 a.m.) and twelve o'clock (12:00) noon on Sundays.

T.C.A. § 57-4-203(d)(5) Local government may opt out of the expanded hours

- (d) (5) The commission is authorized to extend the hours of sale in the jurisdictions which have approved the sale of liquor by the drink by referendum; provided, however, that such extension of hours as well as § 57-5-301(b)(5) shall apply to Sunday sales of beer within the area of the county outside a municipality which approves liquor by the drink by referendum unless the county legislative body by a two-thirds (2/3) vote sets the hours for Sunday sales of beer in accordance with § 57-5-301(b)(1) to apply within such area. Upon petition by any licensee or group of licensees under this chapter, the commission may, after conducting a rule-making hearing pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, adopt rules expanding the hours during which it is legal to sell or give away alcoholic beverages, malt beverages and wine, pursuant to this chapter. The commission is hereby directed to consider such factors as the hours of sales in contiguous states and the need to compete with jurisdictions elsewhere in the country for convention and tourism business. The governing body of any municipality or metropolitan government which has approved liquor by the drink by referendum may, at any time, opt out of any extension of hours adopted under this section by passage of a resolution. Further, any municipality or metropolitan government that has opted out may, at a later date, opt in by passage of a resolution.

T.C.A. § 57-4-301 Liquor by the drink privilege tax

- (b) (1) Each applicant for an on-premises consumption license shall pay to the commission a one-time, nonrefundable fee in the amount of three hundred dollars (\$300) when the application is submitted for review. Further, once a license is approved, for the exercise of such privilege, the following taxes are levied to be earmarked for and allocated to the commission for the purpose of the administration and enforcement of the duties, powers, and functions of the commission, and are to be paid annually, as follows: [Click here to view table.](#)

		Effective	
		July 2003	July 2004
(A)	Private club	\$300	\$500
(B)	Convention center	\$500	\$1,000
(C)	Premier type tourist resort	\$1,500	\$2,000
(D)	Historic performing arts center	\$300	\$150
(E)	Urban park center	\$500	\$150
(F)	Commercial passenger boat company	\$750	\$1,250
(G)	Historic mansion house site/Historic inn	\$300	\$150
(H)	Historic interpretive center	\$300	\$150
(I)	Community theater	\$300	\$150
(J)	Zoological institution	\$300	\$150
(K)	Museum	\$300	\$150
(L)	Establishment in a terminal building of a commercial air carrier airport	\$1,000	\$1,500
(M)	Commercial airline travel club	\$500	\$1,000
(N)	Public aquarium	\$300	\$150
(O)	Motor speedway	\$1,000	\$2,000
(P)	Sports facility	\$1,000	\$2,000
(Q)	Theater	\$300	\$150

Further, for the exercise of such privilege, the following taxes are hereby levied to be earmarked for and allocated to the commission for the purpose of administration and enforcement of the duties, powers, and functions of the commission, and are to be paid in accordance with the following schedule:

(R) Restaurant, according to seating capacity, on licensed premises:

(i)	40--74 seats	\$650
(ii)	75--125 seats	\$750
(iii)	126--175 seats	\$925
(iv)	176--225 seats	\$975
(v)	226--275 seats	\$1,100
(vi)	276 seats and more	\$1,200

Wine-only restaurant, according to seating capacity on licensed premises:

		July 2003	July 2004	July 2005	July 2006
(vii)	40--125 seats	\$120	\$170	\$220	\$270
(viii)	126--175 seats	\$150	\$200	\$250	\$300
(ix)	176--225 seats	\$160	\$210	\$260	\$310
(x)	226--275 seats	\$180	\$230	\$280	\$330
(xi)	276 seats and more	\$200	\$250	\$300	\$350

(S) Caterers:

July 2003	July 2004	July 2005	July 2006
\$500	\$550	\$575	\$625

(T) Hotels, according to room capacity, on licensed premises:

		July 2003	July 2004	July 2005	July 2006
(i)	0--99 rooms	\$1,000	\$1,000	\$1,000	\$1,000
(ii)	100--399 rooms	\$1,000	\$1,000	\$1,200	\$1,250
(iii)	400 rooms and over	\$1,000	\$1,200	\$1,400	\$1,500

(U) Retirement center \$150

(V) Civic arts center \$150

(W) Limited service restaurant, based on the gross sales of prepared food:

(i)	At least 30% of gross sales	\$2,000
(ii)	At least 20% but not more than 30% of gross sales	\$3,000
(iii)	At least 15% but not more than 20% of gross sales	\$4,000
(iv)	0% but not more than 15% of gross sales	\$5,000
(X)	Food hall	\$1,250
(Y)	Restricted retail business	\$2,000
(Z)	Commercial passenger bus	\$1,250

(2) Each county or municipality within which such privilege is exercised is authorized to levy and collect the privilege tax separately. However, such privilege tax collected by the county or municipality will remain at the 2003 level and any monetary increase of the privilege tax in fiscal years beginning July 1, 2004, and thereafter, as provided in this subsection (b) will be solely used for the purpose of the administration and enforcement of the duties, powers, and functions of the Tennessee alcoholic beverage commission; provided, however, that in any county where metropolitan government prevails, the urban service district shall constitute the municipality and the general service district shall constitute the county insofar as this chapter is concerned.

LOCAL OPTION ELECTIONS AUTHORIZING OR FORBIDDING THE MANUFACTURE, RECEIPT, SALE, STORAGE, TRANSPORTATION, DISTRIBUTION, AND/OR POSSESSION OF ALCOHOLIC OR INTOXICATING BEVERAGES

T.C.A. § 57-3-106 Local option elections

(a) (1) Except as provided in subsection (g), the voters of any county may, by local option election, permit the manufacture, receipt, sale, storage, transportation, distribution and possession of alcoholic beverages, within the territorial limits of such county, by a majority vote, at an election held as hereinafter provided, and, in the event of such permission, the manufacture, receipt, sale, storage, transportation, distribution and possession of alcoholic beverages in such county are lawful; provided, that sales at retail as herein

defined shall be made only in the municipalities in such county as herein defined, or within a civil district of such county, which district shall have a population of thirty thousand (30,000) persons or over, according to the federal census for the year 1950 or any subsequent census, but which civil district shall not have lying either wholly or partly within its boundaries a municipality as herein defined.

(2) In like manner, the voters of any county, at any time while this chapter is in effect, may, by local option election, forbid the manufacture, receipt, sale, storage, transportation, distribution and/or possession of alcoholic or intoxicating beverages, within the territorial limits of such county, by a majority vote, at an election to be held as hereinafter provided, and, in the event of such prohibition, the manufacture, receipt, sale, storage, transportation, distribution and/or possession of alcoholic or intoxicating beverages in such county is unlawful; provided, that this does not apply to a bona fide manufacturer, actually engaged in manufacture under this chapter.

(b) (1) Except in a county having a population of sixty-five thousand (65,000) and not more than seventy thousand (70,000), according to the 1970 federal census or any subsequent federal census, the voters of any municipality in this state which has been incorporated under a general or special law or laws of this state for five (5) years or longer, may, by local option election, permit the manufacture, receipt, sale, storage, transportation, distribution, and possession of alcoholic beverages within the territorial limits of such municipality by a majority vote, at an election held as provided in this section, and in the event of such permission, the manufacture, receipt, sale, storage, transportation, distribution, and possession of alcoholic beverages in such municipality shall be, and become lawful, notwithstanding the fact that the county or any portion thereof in which such municipality is located has, or has not, voted to the contrary under this chapter, and the same shall continue to be lawful until the same is forbidden by the voters of such municipality, by majority vote thereof, at a local option election held as provided in this section.

(2) In like manner, the voters of any such municipality, at any time while this chapter is in effect, may, by local option election, forbid the manufacture, receipt, sale, storage, transportation, distribution, and/or possession of

alcoholic or intoxicating beverages, within the territorial limits of the municipality, by a majority vote, at an election to be held as hereinafter provided, and in the event of such prohibition, the manufacture, receipt, sale, storage, transportation, distribution, and/or possession of alcoholic or intoxicating beverages in the municipality is unlawful, notwithstanding the fact that the county or any portion thereof in which the municipality is located has or has not voted to the contrary under any other provision of this chapter; provided, that this does not apply to a bona fide manufacturer, actually engaged in manufacture under any law of this state.

- (c) (1) Elections provided for in subsections (a) and (b) shall be called and held as elections on questions by the county election commission at the next regular election of the county or municipality, as the case may be, upon receipt of a petition signed by residents of the county or municipality, as the case may be, to a number amounting to ten percent (10%) or more of the votes cast in the county or municipality, as the case may be, for governor of the state of Tennessee at the then last preceding gubernatorial election, requesting the holding of such election. Except that, no election under this chapter may be placed on the same ballot or conducted on the same day of a primary election.
- (2) Such petition shall be addressed to the county election commission of such county, or county in which such municipality is located, and shall read, except for such address, substantially as follows:

We, registered voters of _____ (here insert name of county or municipality, as the case may be), do hereby request the holding of a local option election to authorize retail package stores to sell alcoholic beverages as provided by law.

- (3) Such petition may be in two (2) or more counterparts.
- (d) (1) Registered voters of the county or municipality, as the case may be, may vote in the election. Ballots shall be in the form prescribed by the general election laws of the state, except as herein otherwise provided.
- (2) The questions submitted to the voters appearing thereon in county elections shall be in the following form:

To permit retail package stores to sell alcoholic beverages in

(Here insert name of county)

Not to permit retail package stores to sell alcoholic beverages in
_____.

(Here insert name of county)

(3) The questions submitted to the voters appearing thereon in municipal elections shall be in the following form:

To permit retail package stores to sell alcoholic beverages in
_____.

(Here insert name of municipality)

Not to permit retail package stores to sell alcoholic beverages in
_____.

(Here insert name of municipality)

(e) In county elections, the county election commission shall hold a prior supplemental registration, unless such election be at the time of a general election, such registration to be held at the time and in the manner prescribed by law for the holding of supplemental registration previous to the election for members of the general assembly.

(f) (1) The county election commission shall certify the results of the election to the county mayor in county elections and to the mayor of the municipality in municipal elections.

(2) Not more than one (1) election in any such county or municipality shall be held under this chapter within any period of twenty-four (24) months, except that no election in an entire county or any portion thereof in which such municipality is located, held under this chapter, is an election held in such municipality within the meaning of this subdivision (f)(2).

(3) Should any county or municipality thereof conduct a local option election under this chapter in conjunction with any general election, and the number of qualified votes cast negative to the local option proposition exceeds sixty percent (60%) of the total number of votes cast in the election, no further local option election in such county or municipality shall be held for a period of four (4) years from the date of such previous election. However, no election in an entire county or any portion thereof in which such municipality is located,

held under this chapter, is an election held in such municipality within the meaning of this provision.

MANUFACTURER AND DISTILLERS LICENSES

T.C.A. § 57-3-202(i) Manufacturer allowed to sell at retail (license and fees)

- (i) (1) A manufacturer's license issued or renewed under this section to a manufacturer shall also allow such manufacturer to sell at retail on the licensed premises of the manufacturer products that are manufactured on the manufacturer's premises; provided, that no more than five gallons (5 gals.) or one-sixth (1/6) of a barrel of its products may be sold to any one (1) individual per visit to the premises. The manufacturer may serve samples of the product manufactured or distilled at the premises to any person of legal drinking age with or without cost or may include such samples as part of a tour of the manufacturer's or distiller's premises available to the public with or without cost. Such samples may be made available at any location on the manufacturing premises permitted by federal law. The manufacturer shall disclose to the commission the location where samples are available. The hours of sale for the manufacturer to sell products at retail shall be between the hours of eight o'clock a.m. (8:00 a.m.) and eleven o'clock p.m (11:00 p.m) on Monday through Saturday and between the hours of ten o'clock a.m. (10:00 a.m.) and eleven o'clock p.m. (11:00 p.m.) on Sunday.

T.C.A. § 57-3-202(j) Alcoholic beverage festivals authorized

- (j) (1) Any nonprofit association organized to encourage and support the manufacture of alcoholic beverages with three (3) or more manufacturers licensed under this section or non-manufacturer non-resident sellers licensed under § 57-3-602(c) as members shall be allowed to hold not more than fifteen (15) alcoholic beverage festivals per calendar year. Each festival shall not exceed a period of seventy-two (72) hours.
- (2) Any manufacturer licensed under this section or non-manufacturer non-resident seller licensed under § 57-3-602(c) participating in a festival authorized by this subsection (j) shall be allowed to transport, serve and offer complimentary samples of any alcoholic beverage lawfully manufactured by

the manufacturer or on behalf of the non-manufacturer non-resident seller pursuant to § 57-3-602(c) for tasting at the festival.

(3) Any manufacturer licensed under this section or non-manufacturer non-resident seller licensed under § 57-3-602(c) participating in a festival authorized by this subsection (j) shall be allowed to transport alcoholic beverages produced by that manufacturer or on behalf of that non-manufacturer non-resident seller to sell at the festival for consumption off-premises.

(4) (A) Any nonprofit association authorized by this subsection (j) to hold an alcoholic beverage festival shall apply for a special occasion license as defined in § 57-4-102, in order for participating manufacturers licensed under this section or non-manufacturer non-resident sellers licensed under § 57-3-602(c) to serve complimentary samples as described in subdivision (j)(2) and to sell alcoholic beverages produced by the manufacturers or on behalf of the non-manufacturer non-resident sellers for consumption off-premises.

(B) Notwithstanding § 57-4-102(34)(A), a special occasion license issued for an alcoholic beverage festival authorized by this subsection (j) shall be for the duration of the festival for which application is made for a period not to exceed seventy-two (72) hours. A special occasion license issued pursuant to this subsection (j) shall only be available upon the payment of the fee as required by law for each separate day of the festival.

(C) A nonprofit association authorized to conduct an alcoholic beverage festival pursuant to this subsection (j) shall be permitted to hold the festival in any municipality or county of the state in the manner provided in subdivision (j)(5).

(5) A nonprofit association, as defined in subdivision (j)(1), is authorized to conduct an alcoholic beverage festival pursuant to this subsection (j) in a municipality or county of this state that has approved the sale of alcoholic beverages or has a licensed manufacturer located in that municipality or county, subject to complying with all permit requirements of the municipality or county, and in all other municipalities or counties upon receiving approval

of the legislative body of the municipality or county to hold such festival at a location and in such manner authorized by such legislative body.

MANUFACTURING ALCOHOL IN TENNESSEE

T.C.A. § 57-2-103(d)(1) Local option manufacture only

- (d) (1) Notwithstanding subsections (a)-(c), it shall be lawful to manufacture intoxicating liquors or intoxicating drinks, or both, within the boundaries of:
- (A) A municipality if both retail package sales and consumption of alcoholic beverages on the premises have been approved through referendum of voters within such municipality;
 - (B) A municipality that has approved consumption of alcoholic beverages on the premises within the municipality by local option election and that is located in a county having a population of not less than forty-eight thousand five hundred (48,500) and not more than forty-eight thousand six hundred (48,600), according to the 2010 federal census or any subsequent federal census;
 - (C) The unincorporated areas of a county, or a municipality which has a population of less than one thousand (1,000) persons in such county, if any jurisdiction located within such county has approved retail package sales through referendum of voters and any jurisdiction located within such county has approved consumption of alcoholic beverages on the premises through referendum of voters or if the county is included in the Tennessee River resort district as defined in § 57-4-102 and retail package sales have been approved through referendum by the voters in any jurisdiction within such county;
 - (D) Any municipality authorized under § 57-4-102(27) to allow facilities or establishments in such municipality to sell alcoholic beverages or wine for on premises consumption;
 - (E) Any county or municipality where it was lawful to have manufacturing of intoxicating liquors or intoxicating drinks, or both under this subsection (d) as it read prior to July 1, 2013;

T.C.A. § 57-2-103(d)(3)(A) Municipalities may opt out of the authority to allow for

the manufacturing of alcohol

(d) (3) (A) Notwithstanding subdivision (d)(1), the legislative body of any municipality may adopt a resolution to remove the municipality from the application of this subsection (d) subject to the restrictions in subdivision (d)(3)(B). The legislative body of the municipality shall notify the alcoholic beverage commission if such action is taken and approved.

(B) Such action may be taken by the legislative body of the municipality pursuant to subdivision (d)(3)(A) until a written notification is filed with the legislative body of the municipality by any person as an official notice that the person intends to pursue all lawful avenues to manufacture intoxicating liquors or intoxicating drinks, or both, within the boundaries of the municipality. Once the notice is filed, no action may be taken by the legislative body of the municipality unless such interest is withdrawn or the person's application to manufacture such intoxicating liquors or intoxicating drinks, or both, is denied by the state or federal government. A written notification as described pursuant to this subdivision (d)(3)(B) may not be filed with the legislative body of the municipality until at least forty-five (45) days after July 1, 2013.

(C) If a municipality adopts a resolution pursuant to subdivision (d)(3)(A), the municipality may at a later date adopt a resolution reversing such action. The legislative body of the municipality shall notify the alcoholic beverage commission if such action is taken and approved.

T.C.A. § 57-2-103(d)(4) Distance requirements for manufacturers

(d) (4) If a manufacturer that has been issued a license pursuant to this subsection (d) is also selling the manufacturer's alcoholic beverages or products at retail and the manufacturer is located in a jurisdiction that pursuant to § 57-5-105 has established a distance requirement that restricts the storage, sale or manufacture of beer from places of public gatherings or in a municipality or Class B county that pursuant to § 57-5-106 has adopted proper ordinances governing the storage, sale, manufacture and/or distribution of beer within its

jurisdictional boundary, then any distance requirement related to a building used for religious purposes or a building used as an elementary or secondary school in effect in that jurisdiction shall apply to the building used for the retail sale of the manufacturer's alcoholic beverages or products containing alcohol. The measurement shall be a building-to-building measurement.

T.C.A. § 57-2-103(f)(1) Manufacture of high alcohol content beer

- (f) (1) Notwithstanding subsections (a)-(c), it shall be lawful to manufacture high alcohol content beer as defined in § 57-3-101(a) within the boundaries of:
- (A) A municipality if both retail package sales and consumption of alcoholic beverages on the premises have been approved through voter referendum of voters within such municipality; or
 - (B) The unincorporated areas of a county if any jurisdiction located within such county has approved retail package sales through referendum of voters and any jurisdiction located within such county has approved consumption of alcoholic beverages on the premises through referendum of voters or if the county is included in the Tennessee River resort district as defined in § 57-4-102 and retail package sales have been approved through voter referendum in any jurisdiction within the county.
- (2) Any manufacturer authorized pursuant to subdivision (f)(1) must also hold a brewer's notice approved by the United States department of the treasury, alcohol and tobacco tax and trade bureau, or any successor federal beer manufacturing permit granted by a federal bureau having jurisdiction over the manufacture of beer.
- (3) In all jurisdictions not meeting the requirements of subdivision (f)(1), it shall be lawful to manufacture high alcohol content beer as defined in § 57-3-101(a) within the boundaries of a municipality or in the unincorporated area of such county upon such jurisdiction meeting the requirements of subsections (a)-(c), and if the manufacturer also holds a brewer's notice approved by the United States department of the treasury, alcohol and tobacco tax and trade bureau, or any successor federal beer manufacturing permit granted by a federal bureau having jurisdiction over the manufacture of beer.

(4) Notwithstanding any other law to the contrary, it shall be lawful for any manufacturer of high alcohol content beer authorized to manufacture such beverages pursuant to subdivision (f)(1) to also brew beer as this term is defined in § 57-5-101(b) on the same premises of the manufacturer of high alcohol content beer, upon meeting necessary federal, state and local license requirements.

T.C.A. § 57-2-107 Hours of sales for licensed manufacturers

The hours of sale for a manufacturer licensed to sell products at retail under § 57-3-204(e) shall be the same as for a manufacturer licensed to sell products at retail under § 57-3-202. Those hours are between 8:00 a.m. and 11:00 p.m. on Monday through Saturday and between 10:00 a.m. and 11:00 p.m. on Sunday. See 57-3-202(i)(1).

MUNICIPALITY DEFINED

T.C.A. § 57-3-101(a)(15) Municipality defined for purposes of Title 57 of the Tennessee Code

(A) “Municipality” means an incorporated town or city having a population of:

(i) Seven hundred (700) or more, according to the 2010 federal census or a subsequent federal census; or

(ii) Not less than five hundred seventy (570) nor more than six hundred ninety-nine (699), according to the 2020 federal census or a subsequent federal census, and that employs a full-time police department; and

(B) When an incorporated town or city by ordinance authorizes a census to be taken of such incorporated town or city and provides the commission with a certified copy of the census containing the name, address, age, and sex of each person enumerated therein, and if the census shows that the incorporated town or city meets the requirements of subdivision (a)(15)(A), the commission, upon verification of the census and the existence of a full-time police department, if applicable, may declare such incorporated town or city to be a “municipality” for the purposes of this chapter;

RETAIL PACKAGE STORES AND RETAIL LICENSES

T.C.A. § 57-3-204 Moratorium on new retail package store licenses

(a) For the retail sale of alcoholic spirituous beverages, including beer and malt beverages, as in this chapter defined, a license may be issued as herein provided. Any person, firm, or corporation desiring to sell alcoholic spirituous beverages, including beer and malt beverages, to patrons or customers, in sealed packages only, and not for consumption on the premises except for conducting tastings pursuant to § 57-3-404(h)(2), shall make application to the commission for a retailer's license, which application shall be in writing and verified, on forms herein authorized to be prescribed and furnished; and the commission may, subject to the restrictions of this chapter, issue such retailer's license. If the premises with respect to which the license is sought is owned by a person, firm or corporation not the applicant, the application shall include the name and address of the owner. If the ownership of the premises should change after a license is granted, the licensee shall, within ten (10) days after becoming aware of such change in ownership, notify the commission in writing of the name and address of the new owner.

T.C.A. § 57-3-205 Locations of places entitled to have retail package stores

(a) No license entitling the holder thereof to sell or deal in alcoholic spirituous beverages at retail shall be granted with respect to premises not situated within either a municipality as defined in § 57-3-101 or within a civil district of a county, which district shall have a population of thirty thousand (30,000) persons or more, according to the federal census for the year 1950 or any subsequent census, but which civil district shall not have lying either wholly or partially within its boundaries a municipality as defined in § 57-3-101.

T.C.A. § 57-3-208(a) and (b): Certificate of compliance for retail package store

(a) As a condition precedent to the issuance of a license under § 57-3-204, every applicant for a license under that section shall submit with the application to the commission a certificate signed by the county mayor or chair of the county commission in which the licensed premises are to be located if outside the corporate limits of a municipality or, if within a municipality, from the mayor or a majority of the

commission, city council, or legislative body of the municipality, by whatsoever name designated, or if the municipality has no mayor, from the highest executive of the municipality.

(b) (1) The certificate must state:

(A) That the applicant or applicants who are to be in actual charge of the business have not been convicted of a felony within a ten-year period immediately preceding the date of application and, if a corporation, that the executive officers or those in control have not been convicted of a felony within a ten-year period immediately preceding the date of the application;

(B) That the applicant or applicants have secured a location for the business which complies with all restrictions of any local law, ordinance, or resolution, duly adopted by the local jurisdiction, as to the location of the business;

(C) That the applicant or applicants have complied with any local law, ordinance or resolution duly adopted by the local authorities regulating the number of retail licenses to be issued within the jurisdiction;

(D) The certificate remains valid unless there is a change of ownership or location. If either of these events occurs, a new certificate must be obtained prior to renewal.

(2) Each applicant or officer identified in subdivision (b)(1)(A) must obtain and submit with the certificate a local and national criminal history record obtained from a third party using a multistate criminal records locator or other similar commercial nationwide database with validation. A criminal history record that indicates that the applicant or officer has not been convicted of a felony within the immediately preceding ten-year period serves as proof satisfactory that the applicant or officer has complied with subdivision (b)(1)(A).

T.C.A. § 57-3-208(c), (d), and (e): Limitation on location and number of licenses issued

(c) Municipalities and counties are hereby authorized to limit the location of retail liquor stores and the number of licenses issued within their jurisdictions. No local law, ordinance or resolution may limit the location and number of licenses authorized

under § 57-3-204, so as to unreasonably restrict the availability of alcoholic beverages for the residents of such municipalities and counties. A local jurisdiction may impose reasonable residency requirements on any applicant. However, if a local jurisdiction does impose such residency requirements, such local jurisdiction shall not be authorized to impose any residency requirement on any applicant who has been continuously licensed pursuant to § 57-3-204 for seven (7) consecutive years.

(d) An applicant may seek review of the denial of a certificate by instituting an action in the chancery court having jurisdiction over the municipality or county within sixty (60) days of the denial.

(e) A failure on the part of the issuing authority to grant or deny the certificate within sixty (60) days of the written application for such shall be deemed a granting of the certificate.

T.C.A. § 57-3-210(b) Officials and employees prohibited from obtaining retail package store licenses

(b) (1) No wholesaler's or retailer's license shall be issued to a person who is a holder of a public office, either appointive or elective, or who is a public employee, either national, state, city or county. It is unlawful for any such person to have any interest in such wholesale or retail business, directly or indirectly, either proprietary or by means of any loan, mortgage, or lien, or to participate in the profits of any such business;

(2) The foregoing shall not apply to uncompensated appointees to municipal boards and commissions where the boards or commissions on which such appointees serve have no duty to vote for, overlook, or in any manner superintend the sale of alcoholic beverages.

T.C.A. § 57-3-213 Expiration of retail package store license (no new certificate of compliance required)

(a) Each license shall expire twelve (12) months following the date of its issuance.

The commission is authorized to issue renewal licenses for all qualified persons licensed as of July 1, 1981 for a period of time greater than three (3) months but less than a year so as to distribute expiration dates throughout the year, for the year

following July 1, 1981 only. The license fee or the proportionate part thereof prescribed by this chapter shall be paid in advance at the time the application for renewal is made as provided by this chapter.

(b) Each license issued pursuant to this chapter may be renewed upon application therefor by the licensee. The renewal application shall be accompanied by the payment of the annual fee for such license. Each license shall automatically expire twelve (12) months from the date of its issuance unless the licensee has filed a renewal application and paid the annual license fee or privilege tax required by this title.

(c) The commission shall consider the application with all other evidence which it may obtain by investigation or otherwise in determining whether the license is to be renewed. The commission shall make such order, as the entire record justifies, granting or refusing the renewal application, and such order shall be effective from its date. If the license is not renewed, the applicant is entitled to the hearing and notice requirements as set out in § 57-3-214.

T.C.A. § 57-3-221 Manager's permit required for individual in actual control of the alcohol operations of a retailer or a retail food store wine licensee

(a) There is created a manager's permit to be issued by the commission to any individual who will be in actual control of the alcohol, wine or beer operations of a retailer licensed under § 57-3-204, or a retail food store wine licensee.

(b) An individual seeking a manager's permit shall make application for such permit by completing an application form in the manner prescribed by the commission. The individual must demonstrate that the individual meets the following requirements:

- (1) Has not been convicted of any crime involving the sale or distribution of alcohol over the previous eight (8) years;
- (2) Has not been convicted of any felony within the previous five (5) years;
- (3) Is at least eighteen (18) years of age;
- (4) Has not had an employee or server permit or any similar type permit issued by the state, any local jurisdiction, or any foreign jurisdiction revoked by any issuing authority within the previous three (3) years;
- (5) Does not hold any ownership interest in any licensee or permittee licensed pursuant to § 57-3-203, nor shall the individual have had any ownership

interest in any licensee licensed under this title that has had its license revoked by the issuing authority within the previous eight (8) years; and

(6) Has received training in alcohol awareness and the rules and regulations of the commission by an entity approved by the commission pursuant to § 57-3-705.

(c) The manager's permit shall be valid for a period of five (5) years. The commission may impose a fee for the processing and cost of issuance of the manager's permit and for renewal of such permit. The fee shall be adequate for the commission to undertake an appropriate verification of the information provided by the applicant. This fee, which shall not exceed two hundred dollars (\$200), shall be determined by the commission.

(d) Manager's permits shall be required for the appropriate individuals at retailers licensed under § 57-3-204 and retail food store wine licensees.

T.C.A. § 57-3-224(a)(1) Delivery service license

(a) (1) There is created a delivery service license to be issued by the commission to any delivery service that delivers or facilitates delivery of prepared food from restaurants or items from a retail store to customers as part of the delivery service's business and seeks to deliver sealed packages of alcoholic beverages or beer or both sold by any retailer licensed under this chapter, or an off-premises retail permittee licensed under § 57-5-103 as part of such delivery service. If a delivery service licensed under this section is delivering alcoholic beverages or beer purchased from a retailer in accordance with this subsection (a), the delivery service shall not deliver the alcoholic beverages or beer to a customer who resides or is located at the time of the delivery:

(A) More than fifty (50) miles from the licensed premises of the retailer at which the alcoholic beverages or beer were purchased; or

(B) In any county other than the county in which such retailer is located or a county contiguous to such county.

T.C.A. § 57-3-404(e)(2) Retail package store and beer permit

(e) (2) Notwithstanding subsection (a), beginning July 1, 2014, a retail licensee holding a license issued under § 57-3-204 shall be permitted to sell at retail

beer and other malt beverages, subject to the restriction in [former] § 57-3-806(e). No permit or license other than the license issued pursuant to § 57-3-204 shall be required for the licensed retailer to engage in such sales of beer and other malt beverages and the issuer of that license has the authority to enforce any laws related to such sales.

T.C.A. § 57-3-404(f) Location of retail package store

(f) No wholesale or retail store shall be located except on the ground floor, and it may have two (2) main entrances opening on a public street, and such place of business shall have no other entrance for use by the public except as hereafter provided. When a wholesale or retail store is located on the corner of two (2) public streets, such wholesale or retail store may maintain a door opening on each of the public streets. Any sales room adjoining the lobby of a hotel or other public building may maintain an additional door into such lobby so long as same shall be open to the public. Every wholesale and retail store shall be provided with whatever entrances and exits may be required by existing or future municipal ordinances. When the location of a wholesale or retail liquor store is authorized to be located or operated within an established shopping center or shopping mall, and such liquor store cannot and does not have a main entrance or door opening onto a public street, but the main entrance or door would open or front on a shopping center parking area, the commission in its discretion may approve the issuance of a liquor license to cover such location within the shopping center or shopping mall, irrespective of the fact that the main entrance or door does not or would not open onto a public street.

T.C.A. § 57-3-406(e) Retail package store hours

(e) No retail store shall sell, give away, or otherwise dispense alcoholic beverages except between the hours of eight o'clock a.m. (8:00 a.m.) and eleven o'clock p.m. (11:00 p.m.) on Monday through Saturday and between ten o'clock a.m. (10:00 a.m.) and eleven o'clock p.m. (11:00 p.m.) on Sunday.

T.C.A. § 57-3-501 Municipal inspection fee imposed on retailers

(a) (1) A municipality as defined by § 57-3-101 shall have the authority to impose by ordinance an inspection fee upon licensed retailers of alcoholic beverages

as defined by § 57-3-101 or upon retail food store wine licensees located within such municipality.

(2) If, pursuant to § 57-3-204(d)(7), a manufacturer of high alcohol content beer obtains a retail license to sell its products which are manufactured on the manufacturer's premise, the governing body of the municipality or county in which such a manufacturer is located shall impose by ordinance or resolution, as appropriate, a fifteen-percent inspection fee to inspect the retail store in which such products are sold by the manufacturer. Such inspection fee shall be imposed on the wholesale price of the high alcohol content beer supplied pursuant to § 57-3-204(d)(7)(B) by a wholesaler for those products manufactured and sold by the manufacturer at its retail store as authorized pursuant to § 57-3-204(d)(7).

(b) The inspection fees shall not exceed eight percent (8%) of the wholesale price of alcoholic beverages supplied by a wholesaler in municipalities located in counties of this state having a population of less than sixty thousand (60,000), according to the 1960 federal census or any subsequent federal census, or in counties that contain a municipal corporation as defined in § 67-6-103(a)(3)(B)(i), notwithstanding subsection (c) to the contrary.

(c) The inspection fees shall not exceed five percent (5%) of the wholesale price of alcoholic beverages supplied by a wholesaler in municipalities located in counties of this state having a population of more than sixty thousand (60,000), according to the 1960 federal census or any subsequent federal census.

(d) Any municipality having a metropolitan form of government and a population of over four hundred fifty thousand (450,000), according to the 1990 federal census or any subsequent federal census, which has levied the inspection fees herein authorized may, by ordinance of its legislative body, designate the county clerk as the collector of the fees for the entire metropolitan taxing jurisdiction.

T.C.A. § 57-3-502 Collection of inspection fees

The inspection fee shall be collected by the wholesaler from the retailer following notice given the wholesaler by the municipality that an inspection fee has been imposed by ordinance upon the retailers located within the particular municipality. The inspection fee shall be collected by the wholesaler at the time of the sale or at

the time the retailer makes payment for the delivery of the alcoholic beverages.

T.C.A. § 57-3-503 Reports and payments of the inspection fee to municipalities

(a) Each wholesaler making sales to retailers located within a municipality imposing an inspection fee shall furnish the municipality a report monthly, which report shall contain a list of the alcoholic beverages sold to each retailer located within the municipality, the wholesale price of the alcoholic beverages sold to each retailer, the amount of tax due, and such other information as may be required by the municipality. The monthly report shall be furnished the municipality imposing the tax not later than the twentieth of the month following which the sales were made. The inspection fees collected by the wholesaler from the retailer or retailers located within each municipality shall be paid to the municipality at the time the monthly report is made. Wholesalers collecting and remitting the above inspection fee to municipalities shall be entitled to reimbursement for this collection service, a sum equal to five percent (5%) of the total amount of inspection fees collected and remitted, such reimbursement to be deducted and shown on the monthly report to the municipality.

(b) Failure to collect or timely report and/or pay the inspection fee collected shall result in a penalty of ten percent (10%) of the fee due the municipality which shall be payable to the municipality imposing the inspection fee.

(c) Municipalities to whom inspection fees are paid shall have authority to audit the records of wholesalers reporting to them in order to determine the accuracy of such reports.

WINE IN RETAIL FOOD STORES (WINE IN GROCERY STORES)

T.C.A. § 57-3-801 Authorization to sale wine in retail food stores

(a) (1) This part is effective in a jurisdiction that authorizes the sale of wine in retail food stores in a referendum in the manner prescribed by § 57-3-106; provided, however, that the jurisdiction must have held and passed, or be located within a county that has held and passed, a referendum authorizing retail package stores or a referendum authorizing the sale of alcoholic beverages for consumption on the premises prior to holding a referendum authorized under this section.

(2) If the county election commission receives the necessary petition requesting the referendum not less than forty-five (45) days before the date on which an election is scheduled to be held, except for referenda scheduled to be held with the regular November general election which shall be held pursuant to § 2-3-204, the county election commission shall include the referendum question contained in subsection (b) on the ballot.

(3) Notwithstanding subdivision (a)(1) and § 57-3-101(a)(14) to the contrary, any municipality having a population of not less than five hundred seventy (570) nor more than five hundred seventy-nine (579), according to the 2010 federal census or any subsequent federal census, that is located in any county having a population of not less than twenty-nine thousand four hundred (29,400) nor more than twenty-nine thousand five hundred (29,500), according to the 2010 federal census or any subsequent federal census, may conduct a referendum to authorize the sale of wine at retail food stores within the corporate boundaries of such municipality. The referendum shall be conducted in the manner prescribed by § 57-3-106, notwithstanding the population requirements of § 57-3-106(b)(1). (b) At any such election, the question submitted to the voters shall be in the following form:

For legal sale of wine at retail food stores in _____ (here insert name of political subdivision).

Against legal sale of wine at retail food stores in _____ (here insert name of political subdivision).

(c) A referendum described in this section may be held at any election prescribed in § 57-3-106(c)(1); provided, however, that no such referendum may be held prior to the regular November election in 2014.

T.C.A. § 57-3-805 Location of store with a retail food store wine license

The premises of a retail food store wine license may be located in a municipality or the unincorporated areas of a county; provided, that such county or municipality has approved sales of wine by retail food stores by local option election pursuant to § 57-3-801. If a county-wide referendum is approved under this part, the premises of a retail food store wine license may be located in any municipality that participated in the referendum regardless of the minimum population requirement for a municipality

in § 57-3-101.

T.C.A. § 57-3-806 Certificate of Compliance for retail food store wine license

(a) As a condition precedent to the issuance of a license under § 57-3-803, every applicant for a license under that section shall submit with the application to the commission a certificate signed by the county mayor or chair of the county commission in which the licensed premises are to be located if outside the corporate limits of a municipality or, if within a municipality, from the mayor or a majority of the commission, city council, or legislative body of the municipality, by whatsoever name designated, or if the municipality has no mayor, from the highest executive of the municipality. The issuance of a certificate must not be conditioned on the residency of the applicant, including, but not limited to, requiring the applicant to live within the county or municipality, or additional conditions not required by this section. The certificate remains valid unless there is a change of ownership or location. If either of these events occurs, a new certificate must be obtained prior to renewal.

(b) (1) The certificate must state:

(A) That the applicant or applicants who are to be in actual charge of the business have not been convicted of a felony within a ten-year period immediately preceding the date of application and, if a corporation, that the executive officers or those in control have not been convicted of a felony within a ten-year period immediately preceding the date of the application; and

(B) That the applicant or applicants have secured a location for the business which complies with all zoning laws adopted by the local jurisdiction, as to the location of the business.

(2) Each applicant or officer identified in subdivision (b)(1)(A) must obtain and submit with the certificate a local and national criminal history record obtained from a third party using a multistate criminal records locator or other similar commercial nationwide database with validation. A criminal history record that indicates that the applicant or officer has not been convicted of a felony within the immediately preceding ten-year period serves as proof satisfactory that the applicant or officer has complied with subdivision (b)(1)(A).

T.C.A. § 57-3-806(c) No limitation on the number of retail food store wine licenses issued.

Municipalities and counties are not authorized to limit the number of retail food store wine licenses issued within their jurisdictions.

T.C.A. § 57-3-806(f) and (g) Denial of a certificate of compliance

(f) An applicant may seek review of the denial of a certificate by instituting an action in the chancery court having jurisdiction over the municipality or county within sixty (60) days of the denial.

(g) A failure on the part of the issuing authority to grant or deny the certificate within sixty (60) days of the written application for such shall be deemed a granting of the certificate.

T.C.A. § 57-3-811 Hours of sale for retail food store wine licensee

No retail food store shall sell, give away, or otherwise dispense wine except between the hours of eight o'clock a.m. (8:00 a.m.) and eleven o'clock p.m. (11:00 p.m.) on Monday through Saturday and between ten o'clock a.m. (10:00 a.m.) and eleven o'clock p.m. (11:00 p.m.) on Sunday.

T.C.A. § 57-3-816 Manger permit for retail food store wine licensee

(a) Any retail food store that is licensed to sell wine must have a permitted manager as prescribed in § 57-3-221 and that manager must work on the premises of the licensed retail food store. A retail food store may have more than one (1) manager per license.

(b) All employees of a retail food store that is licensed to sell wine and is involved in selling the wine must obtain certification pursuant to the responsible vendor training program for wine in § 57-3-818.

T.C.A. § 57-3-817 Wine tastings prohibited in retail food stores

(a) No retail food store shall conduct tastings of wine on the premises of the retail food store.

(b) A retail food store that has a license pursuant to this part may also hold a license to sell alcoholic beverages for consumption on premises pursuant to chapter 4 of this

title.

T.C.A. § 57-3-819 Sales prohibited on certain holidays

Notwithstanding any law to the contrary, a retail food store wine licensee shall not sell or give away wine on Christmas, Thanksgiving, or Easter.

Frequently Asked Questions

May cities regulate the hours for beer sales?

If the city does not have on-premises liquor sales, the city has the authority under T.C.A. § 57-5-106 to set the hours of operation for both retail and on-premises beer consumption. T.C.A. § 57-5-106 provides: “cities, towns and Class B counties may impose additional restrictions, fixing zones and territories and provide hours of opening and closing and such other rules and regulations as will promote public health, morals and safety as they may by ordinance provide.”

However, if the city has on-premises liquor sales, T.C.A. § 57-5-113 requires the on-premises beer sales to be the same as those set by ABC, but the city has the option of starting the Sunday sales at 10 a.m. or at noon. If the city does not pass an ordinance setting Sunday hours to begin at noon, the sales would automatically start sales at 10 a.m. You can find these specified hours in the state rules and regulations (<https://publications.tnsosfiles.com/rules/0100/0100-01.20240509.pdf>; see section 0100-01-.03(2) on page 3).

Is brown bagging legal in Tennessee and may cities regulate it?

The Attorney General has opined that “brown bagging” is legal in the state, and the selling of “setups” is authorized by T.C.A. § 67-4-410(b) if the municipality has authorized package stores or if the business holds an on-premises liquor by the drink license. However, municipalities may regulate brown bagging in establishments with a beer license. The Attorney General opined:

“Brown bagging” is not defined in the Tennessee Code. Nevertheless, “brown bagging” is defined as “the practice of carrying a bottle of liquor into a restaurant or club where set-ups are available.” Webster’s Ninth New Collegiate Dictionary, 182 (1984). Apparently, that is the judicial usage of the term in Tennessee. See, Woods v. Holiday Inn of Murfreesboro, 581 S.W.2d 648, 649–650 (Tenn.1979). The one who carries the bottle of liquor into such a place is the one who is doing the brown bagging, not the restaurant or club; and such a person is referred

to as a “brown bagger,” not the restaurant or club. Id.

This Office has previously opined that “brown-bagging is legal in Tennessee.” 86 Op.Att’y.Gen. 155 (1986); 12 Op.Att’y.Gen. 258 (1983) (copies attached). That conclusion was reached on the bases that: T.C.A. § 57-4-203(i)(1) (Supp.1985) was amended by Chapter 277 of the Public Acts of 1975 to eliminate a prohibition against establishments allowing the “consumption” of alcoholic beverages, and that T.C.A. § 67-4-410 provides that the “sale of set-ups for mixed drinks is hereby declared lawful in localities where the sale of packaged alcoholic beverages is lawful” and that one doing such business must pay the State a privilege tax of 15% of the gross receipts from the same. We see no reason to apply any different result to a municipality which has approved the sale of liquor by the drink by local referendum pursuant to T.C.A. §§ 57-4-101, 57-4-103, and 57-3-106. Thus, we adhere to our previous opinion.

Tenn. Op. Att’y Gen. No. 89-113 (Sept. 5, 1989).

May the city allow alcohol on city-owned property?

Many municipalities ask whether the municipality may allow special event permits for beer, wine, and liquor in municipal parks. In short, unless the person/entity has a catering license or is a “charitable, nonprofit or political organization,” no authority exists for a municipality to issue a beer permit or the Alcoholic Beverage Commission (“ABC”) to issue a liquor-by-the-drink permit to an individual or entity for use in a municipal park. For the majority of weddings and private events, the catering and charitable exceptions would likely not apply directly to most of those hosting the event.

First, I will address liquor and wine. The regulatory authority over liquor-by-the-drink permits has been preempted by the state. T.C.A. § 57-4-101(g) now provides:

(g) (1) It is lawful for a charitable, nonprofit or political organization

possessing a special occasion license pursuant to § 57-4-102 to serve or sell wine and other alcoholic beverages as defined in § 57-4-102, and beer as defined in § 57-6-102, to be consumed on the designated premises, or sold or donated in sealed containers for off-premises consumption within the boundaries of a political subdivision wherein the sale of alcoholic beverages at retail has been approved pursuant to § 57-3-106 or wherein the sale of alcoholic beverages for consumption has been approved pursuant to § 57-4-103. A special occasion license may also be issued for an event within the unincorporated portion of a county if at least one (1) municipality in such county has approved the sale of alcoholic beverages at retail pursuant to § 57-3-106 or the sale of alcoholic beverages for consumption pursuant to § 57-4-103.

(2) Notwithstanding subdivision (g)(1) to the contrary, a special occasion license may be issued in a jurisdiction wherein the sale of alcoholic beverages for consumption on the premises has not been approved pursuant to § 57-4-103, with written approval to hold an event by and in such jurisdiction that is signed by the executive officer or chair of the legislative body of such jurisdiction.

With this statutory language, ABC may issue special occasion licenses to serve or sell wine and other alcoholic beverages “for a charitable, nonprofit or political organization.” These special occasion licenses may be issued “within the boundaries of a political subdivision wherein the sale of alcoholic beverages at retail has been approved pursuant to § 57-3-106 or wherein the sale of alcoholic beverages for consumption has been approved pursuant to § 57-4-103.”

For entities that are not at one of the enumerated premises listed in T.C.A. § 57-4-101 and who are not “a charitable, nonprofit or political organization” desiring to sell or consume liquor-by-the-drink during a special event, the current authority requires

that a company with a [liquor-by-the-drink caterer's license](#) provide that service pursuant to title 57, chapter 4, part 1, which defines "caterer" in T.C.A. § 57-4-102 as:

- (6) (A) "Caterer" means a business engaged in offering food and beverage service for a fee at various locations, which:
 - (i) Operates a permanent catering hall on an exclusive basis or restaurant;
 - (ii) Has a complete and adequate commercial kitchen facility; and
 - (iii) Is licensed as a caterer by the Tennessee department of health;
- (B) "Caterer" also means a business engaged in offering food and beverage service for a fee at various locations that:
 - (i) Operates a permanent catering hall on an exclusive basis or a restaurant;
 - (ii) Has a complete and adequate commercial kitchen facility;
 - (iii) Is licensed by the Tennessee department of agriculture; and
 - (iv) Is a retail food store that has a license to sell wine under § 57-3-803;

In addition, some jurisdictions have a population bracket that expands the definition of "premises," "public aquarium," "restaurant," etc., which are defined in T.C.A. § 57-4-102, and authorizes specific places/businesses to have a liquor/wine on premises permit.

Certificate of Compliance vs. Certificate of Good Moral Character: which one does the municipality issue?

For most package stores application purposes, the language requiring a "certificate of good moral character" in former T.C.A. § 57-121 was repealed from the statute sometime prior to 1993, and when it was in effect, it was only applicable to alcoholic beverages (as defined in the statute), not beer permits. The current language

requires just a “certificate” that we often call a “certificate of compliance,” and this certificate verifies the applicant’s compliance with certain requirements (see T.C.A. § 57-3-208):

(b) (1) The certificate must state:

(A) That the applicant or applicants who are to be in actual charge of the business have not been convicted of a felony within a ten-year period immediately preceding the date of application and, if a corporation, that the executive officers or those in control have not been convicted of a felony within a ten-year period immediately preceding the date of the application;

(B) That the applicant or applicants have secured a location for the business which complies with all restrictions of any local law, ordinance, or resolution, duly adopted by the local jurisdiction, as to the location of the business;

(C) That the applicant or applicants have complied with any local law, ordinance or resolution duly adopted by the local authorities regulating the number of retail licenses to be issued within the jurisdiction;

(D) The certificate remains valid unless there is a change of ownership or location. If either of these events occurs, a new certificate must be obtained prior to renewal.

However, T.C.A. § 57-4-201 requires that a “club” (as defined in T.C.A. § 57-4-202) seeking a license must obtain a certificate from the municipality that states, “that the persons to be in actual charge of the sale of alcoholic beverages are of good moral character and are personally known to the official or officials signing the certificate, or that such official or officials have made careful investigation of the person’s or persons’ general character, and from such investigation it is found to be good.”

Can package stores sell low-gravity beer without a beer permit?

Municipalities often ask whether a holder of a retail liquor license is required to

obtain a beer permit for the sale of domestic beers with an alcohol by weight content less than 8%. In 2014 as part of the Sale of Wine in Retail Food Stores Act, the General Assembly adopted provisions allowing for retail packages stores to sell beer with a retailer's permit issued by the Alcoholic Beverage Commission ("ABC").

T.C.A. § 57-3-204(a) authorizes the ABC to issue retailer's licenses for the sale of alcoholic spirituous beverages, including beer and malt beverages:

For the retail sale of alcoholic spirituous beverages, including beer and malt beverages, as in this chapter defined, a license may be issued as herein provided. Any person, firm, or corporation desiring to sell alcoholic spirituous beverages, including beer and malt beverages, to patrons or customers, in sealed packages only, and not for consumption on the premises except for conducting tastings pursuant to § 57-3-404(h)(2), shall make application to the commission for a retailer's license, which application shall be in writing and verified, on forms herein authorized to be prescribed and furnished; and the commission may, subject to the restrictions of this chapter, issue such retailer's license. If the premises with respect to which the license is sought is owned by a person, firm or corporation not the applicant, the application shall include the name and address of the owner. If the ownership of the premises should change after a license is granted, the licensee shall, within ten (10) days after becoming aware of such change in ownership, notify the commission in writing of the name and address of the new owner.

In addition, T.C.A. § 57-3-404(e)(2) states that no additional permit is required to sell "beer and other malt beverages":

Notwithstanding subsection (a), beginning July 1, 2014, a retail licensee holding a license issued under § 57-3-204 shall be permitted to sell at retail beer and other malt beverages, subject to the restriction in [former] § 57-3-806(e). No permit or license other than the license

issued pursuant to § 57-3-204 shall be required for the licensed retailer to engage in such sales of beer and other malt beverages and the issuer of that license has the authority to enforce any laws related to such sales.

Beer is defined in T.C.A. § 57-5-101(b) for all of title 57 of the Tennessee Code and includes beer with less than 8% alcohol by weight:

For purposes of this title, “beer” means products made from the normal alcoholic fermentation of malt or other cereal grains, sugar, or fruit ingredients used to make cider, and having an alcoholic content of not more than eight percent (8%) alcohol by weight and that do not contain distilled spirits or wine as defined in § 57-3-101; provided, that at least fifty-one percent (51%) of the overall alcoholic content by weight in the finished product is obtained by the fermentation of malt, other cereal grains, sugar, or fruit ingredients used to make cider, and no more than forty-nine percent (49%) of the overall alcoholic content by weight in the finished product is obtained by the addition of flavorings or other non-beverage ingredients containing alcohol.

Therefore, a retail package store with a retail license from the ABC is authorized to sell beer, including beer with less than 8% alcohol by weight, and retail package stores are not required to obtain a beer permit from the municipality.

May the city adopt distance restrictions for beer and alcohol sales?

Tennessee municipalities’ authority to have a distance requirement for beer permit holders is based on the following language in T.C.A. § 57-5-106: “cities, towns and Class B counties may impose additional restrictions, fixing zones and territories and provide hours of opening and closing and such other rules and regulations as will promote public health, morals and safety as they may by ordinance provide.”

Municipalities do not have the authority to revoke a permit except due to the violation found in T.C.A. § 57-5-108. In addition, T.C.A. § 57-5-109(a) states the following in regards to a legacy right for beer permit locations:

A city or county shall not suspend, revoke or deny a permit to a business engaged in selling, distributing or manufacturing beer on the basis of the proximity of the business to a school, residence, church, or other place of public gathering if a valid permit had been issued to any business on that same location. This section shall not apply if beer is not sold, distributed or manufactured at that location during any continuous six-month period.

As far as retail liquor stores, T.C.A. § 57-3-208 provides the following authority for municipalities to regulate location: “Municipalities and counties are hereby authorized to limit the location of retail liquor stores and the number of licenses issued within their jurisdictions.” The Court of Appeals summarized this authority as follows: “Numerous cases have dealt with power of municipalities to regulate the location of the sale of alcoholic beverages within the municipal limits. These cases . . . have generally held that municipalities have the power to set reasonable limitation on the location of the sale of alcoholic beverages within their boundaries subject to general state law.” Templeton v. Metro. Gov’t of Nashville & Davidson Cnty., 650 S.W.2d 743, 755 (Tenn. Ct. App. 1983). As for on-premises licenses, municipalities must utilize zoning to designate location for the types of businesses eligible for on-premises licenses, and again, those location requirements must be reasonable.

Any distance requirement must be reasonable and applied in an indiscriminatory manner. In Watkins v. Naifeh, the Supreme Court held the following regarding beer permits: “A distance requirement which has been discriminatorily applied is no longer valid.” Watkins v. Naifeh, 635 S.W.2d 104, 109 (*citing City of Murfreesboro v. Davis*, 569 S.W.2d 805 (Tenn. 1978); Seay v. Knox County Quarterly Court, 541 S.W.2d 946 (Tenn.1976); Serv-U-Mart, Inc. v. Sullivan County, 527 S.W.2d 121 (Tenn. 1975). In Watkins, the ordinance included an exception to the distance requirement for existing permit holders, and the applicant argued that the location of the legacied permit holders was evidence of discriminatory application of the distance requirement. The Court further held: “Considering the broader powers of a city to regulate the sale of beer therein, even to the point of prohibition, . . . , the City of

Mason certainly had the authority to include such an exception in its Ordinance There is not a shred of evidence supporting the discrimination claim.” Therefore, a court would also likely uphold a new, increased distance requirement, even with the existence of permit and license holders falling under the previous distance requirements, as long as the new distance requirement was reasonable and applied in an indiscriminatory manner.

May a municipality limit the number of package stores in the municipality? If so, how does the municipality select which applicant receives the certificate of compliance?

T.C.A. § 57-3-208(c) authorizes municipalities to place a reasonable restriction on the number of retail liquor licenses within the town:

(c) Municipalities and counties are hereby authorized to limit the location of retail liquor stores and the number of licenses issued within their jurisdictions. No local law, ordinance or resolution may limit the location and number of licenses authorized under § 57-3-204, so as to unreasonably restrict the availability of alcoholic beverages for the residents of such municipalities and counties. A local jurisdiction may impose reasonable residency requirements on any applicant. However, if a local jurisdiction does impose such residency requirements, such local jurisdiction shall not be authorized to impose any residency requirement on any applicant who has been continuously licensed pursuant to § 57-3-204 for seven (7) consecutive years.

When determining which applicants will receive a certificate of compliance, some municipalities grant the certificate of compliance to the first applicants that meet the requirements, and other municipalities have done drawings of all applicants received by a certain date. However, the drawings could be considered a lottery, which is problematic in Tennessee. Further, while the drawing/lottery selection has not yet been challenged in court, Sid Hemsley was of the opinion that selection for a certificate of compliance by drawing could be considered “arbitrary and capricious.” He opined:

The standard for determining whether a certificate of compliance has been illegally denied by a municipality is whether the denial is unreasonable, arbitrary and capricious. [See City of Chattanooga v. Tennessee Alcoholic Beverage Commission, 525 S.W.2d 470 (Tenn. 1975); Templeton v. Metropolitan Government of Nashville and Davidson County, 650 S.W.2d 743 (Tenn. 1983); SPE, Inc. v. Metropolitan Government of Nashville and Davidson County, 817 S.W.2d 330 (Tenn. Ct. App. 1991). *Also see* the unreported case of CBM Package Liquor, Inc. v. City of Maryville, 2004 WL 1459396 (Tenn. Ct. App. 2004).]

The question of what constitutes an arbitrary decision is addressed in SPE, Inc., above: “An arbitrary decision is one that is based alone on one’s will and not upon any cause of reasoning or exercise of judgement. State ex rel. Nixon v. McCanless, 176 Tenn. 358, 141 S.W.2d 887 (1940).” Other cases have defined the words “arbitrary” and “capricious.” In Jackson Mobilephone Company, Inc. v. Tennessee Public Service Commission, 876 S.W.2d 106 (Tenn. Ct. App. 1994), declares that:

....Agency decisions not supported by substantial and material evidence are arbitrary and capricious. C.F. Indus., Inc. v. Tennessee Public Service Comm’n, 599 S.W.2d 536, 540 (Tenn. 1980); Pace v. Garbage Disposal Dist. of Washington County, 54 Tenn. App. 263, 266, 390 S.W.2d 461, 463 (1965). However, agency decisions with adequate evidentiary support may still be arbitrary and capricious if caused by clear error in judgement. Bowman Transp. Inc., v. Arkansas Best Freight Sys., Inc., 419 U.S. 281, 284, (1974); Girard v. City of Glen Falls, 173 A.D.2d 113, 577 N.Y.S.2d 496, 499 (1991); 5 Kenneth C. Davis, Administrative Law Treatise § 29:7, at 358 (2d ed. 1984)....

....An arbitrary decision is one that is not based on any course of reasoning or exercise of judgment, State ex rel. Nixon v. McCanless, 176 Tenn.352, 354, 141 S.W.2d 885, 886 (1940), or one that disregards the facts or circumstances of the case without some basis that would lead a reasonable person to reach the same conclusion. Wagner v. City of Omaha, 464 N.W.2d 175, 1890 (1991); Ramsey v. Department of Human Servs., 783 S.W.2d 361, 364 (1990).

.... [T]he court should review the record carefully to determine whether the administrative agency's decision is supported by "such relevant evidence as a rational mind might accept to support a rational conclusion." Clay County Manor v. State Dept. Health & Environment, 849 S.W.2d 755, 759 (Tenn.1993); Southern Ry. v. State Bd. Equalization, 682 S.W.2d 196, 199 (Tenn. 1984). The court need not reweigh the evidence, Humana of Tennessee v. Tennessee Health Facilities Comm'n, 551 S.W.2d 664, 667 (Tenn. 1977), and the agency's decision need not be supported by a preponderance of the evidence. Street v. State Bd. of Equalization, 812 S.W.2d 583, 585 (Tenn. App. 1990). The evidence will be sufficient if it furnishes a reasonably sound factual basis for the decision being reviewed. Wayne County v. Tennessee Solid Waste Disposal Control Bd., 756 S.W.2d 274, 279 (Tenn. App. 1988). [At 110-111].

The recent case of Leonard Plating Company v. Metropolitan Government of Nashville and Davidson County, 213 S.W.3d 898 (Tenn. Ct. App 2006), appeal denied by Tennessee Supreme Court, Dec. 27, 2006, the Court, in discussing the scope of review of administrative agencies, said:

Review under common-law writ of certiorari does not extend to a redetermination of the facts found by the board or agency whose decision is being reviewed. Tennessee Waste Movers, Inc. v. Loudon County, 160 S.W.3d 517, 521 n.2 (Tenn. 2005); Cooper v. Williamson County Bd. of Educ., 746 S.W.2d 176, 179 (Tenn. 1987). The courts may not (1) inquire into the intrinsic correctness of the decision, (2) reweigh the evidence, or (3) substitute their judgment for that of the board or agency. However, they may review the record solely to determine whether it contains any material evidence to support the decision because a decision without evidentiary support is an arbitrary one. Watts v. Civil Serv. Bd. For Columbia, 606 S.W.2d at 276-77; Lewis v. Bedford County Bd. of Zoning App., 174 S.W.3d at 246, Lafferty v. City of Winchester, 46 S.W.3d at 759; Sexton v. Anderson County, 57 S.W.2d 663, 667 (Tenn. Ct. App. 1979) [At 903].

It seems clear from the definition of what constitutes an “arbitrary and capricious” decision that a lottery or drawing will not qualify as a decision-making mechanism for determining which applicants for a certificate of compliance are entitled to the certificates. To avoid the “arbitrary and capricious” label, the city’s decision is required to involve a “course of reasoning and judgement,” must be supported by “such relevant evidence as a rational mind might accept to support a rational conclusion, and must not be one “that disregards the facts or circumstances of the case without some basis that would lead a reasonable person to reach the same conclusion.” As Leonard Plating, above, so succinctly says, “...a decision without evidentiary support is an arbitrary one.”

It is difficult to see how a lottery or drawing to select successful applicants for certificates of compliance would involve such decisions. A lottery or drawing is plainly based totally upon chance or luck; no judgement is involved in the decision it produces, and the decision produces no evidence that a court can review.

Also, if the municipality is considering limiting the number of liquor stores that may operate in the municipality, the ordinance with the limitation should be adopted soon after the referendum authorizing package stores passes. Without such an ordinance in place, any application that complies with the law at the time of the application must be granted a certificate of compliance. In addition, if liquor stores have not already been listed as an approved use in at least one zone of the Zoning Ordinance, I would encourage the town to consider an amendment to the zoning ordinance.

Finally, another option for the municipality to consider is to regulate the number of liquor stores practically through zoning and the free market rather than the number of licenses. If the number of licenses is limited to two by ordinance, the municipality will need to keep a file of all applicants going forward in case one of the licenses becomes available. This can be tedious to maintain for the municipality over time. This is simply another consideration as the governing body moves forward.

For questions, please contact the MTAS management consultant assigned to your municipality.



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